[Cite as *Farmers & Merchants State Bank v. Haupricht*, 2011-Ohio-492.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Farmers & Merchants State Bank	Court of Appeals No. L-10-1138
Appellee	Trial Court No. CVF 0901377
v.	
David M. Haupricht	**DECISION AND JUDGMENT**
Appellant	Decided: February 4, 2011

* * * * *

Kirk E. Yosick, for appellee.

George R. Royer, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Sylvania Municipal Court, Lucas County, Ohio, which granted summary judgment and collateral replevin in favor of appellee in connection with a loan taken by appellant from appellee for the purchase of a bulldozer. Appellant subsequently defaulted on the loan. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, David M. Haupricht, sets forth the following two assignments of error:

{¶ 3} "ASSIGNMENT OF ERROR NUMBER ONE: THE COURT SHOULD NOT HAVE GRANTED SUMMARY JUDGMENT TO APPELLEE IN THIS CASE.

{¶ 4} "ASSIGNMENT OF ERROR NUMBER THREE[sic]: THE TRIAL COURT ERRED IN GRANTING APPELLEE'S REQUEST FOR REPLEVIN."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. On December 3, 2007, appellant executed an installment promissory note to appellee in a principal amount of $17,956.48, for the purchase of a bulldozer. In conjunction with this transaction, appellant simultaneously executed two security agreements in favor of appellee furnishing two specified assets as collateral to secure the underlying loan. The assets serving as collateral for the loan were enumerated in the agreements to be the bulldozer acquired with the loan and appellant's 1993 Ford F450 pickup truck.

{¶ 6} On September 21, 2009, appellee filed a complaint on note and replevin against appellant for defaulting on the bulldozer loan. At the time of filing, appellant had failed to tender the monthly payments on the loan for approximately 90 days. On December 15, 2009, appellant filed his answer to the complaint. On February 8, 2010, appellee filed for an order of possession of the assets serving as collateral on the loan. On February 10, 2010, appellee filed for summary judgment in the amount of $9,552.92. The motion was supported by the accompanying affidavit of Lesley Shirkey, who serves as the asset recovery director for appellee.

{¶ 7} On March 4, 2010, the trial court conducted an evidentiary hearing on appellee's request for an order of possession. Shirkey testified to the trial court. Notably, appellant did not attend the hearing. Appellant's counsel attended. Counsel offered no rebuttal witnesses on appellant's behalf at the hearing. On March 16, 2010, appellant filed a response in opposition to summary judgment. The response was unsupported by affidavits or other forms of Civ.R. 56 legally relevant evidence.

{¶ 8} On March 29, 2010, the trial court granted a possession order to appellee. On April 13, 2010, the trial court granted summary judgment to appellee. Timely notice of appeal was filed.

{¶ 9} In his first assignment of error, appellant asserts that the trial court erred in granting summary judgment to appellee. In support, appellant asserts without evidentiary support that he was not in breach of the loan.

{¶ 10} An appellate court reviews a trial court's granting of summary judgment de novo, applying the same standard used by the lower court. *Lorain Natl. Bank v. Saratoga Apts*. (1989), 61 Ohio App.3d 127, 129; *Grafton v. Ohio Edison Co*. (1996), 77 Ohio St.3d 102, 105. Summary judgment is granted where there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 11} The record reflects that in support of summary judgment, appellee offered the affidavit of its asset recovery director. This evidence, not countered by appellant,

established that appellant executed an installment promissory note in favor of appellee in the amount of $17,956.48. It further established that both the bulldozer purchased by the note and appellant's 1993 Ford F450 truck served as collateral for the loan via security agreements executed by appellant. It established that appellant defaulted on the loan and, therefore, the acceleration clause was triggered so that the note became due and payable in full pursuant to the express terms of the loan.

{¶ 12} In response to summary judgment, the record reflects that appellant presented no affidavits, no rebuttal witnesses, and no objective, legally relevant evidence or defenses. Rather, appellant unilaterally set forth various unsupported assertions and denials.

{¶ 13} Based upon our de novo review of the record in this matter, we find that appellee presented ample objective evidence in support of its claims against appellant based upon the note and security agreements executed between the parties. Appellant wholly failed to refute or rebut the claims on any contractual basis or other legally relevant grounds. The record establishes that no genuine issue of material fact was in dispute. As such, summary judgment to appellee was appropriate. We find appellant's first assignment of error not well-taken.

{¶ 14} In appellant's second assignment of error, he asserts that the trial court erred in granting an order of replevin and possession of the collateral to appellee. Appellant's primary argument in support is that the trial court lacked the proper jurisdiction to order replevin of the property. Specifically, appellant contends that because the value of the

collateral at issue exceeds $15,000, the trial court lacked the requisite statutory jurisdiction.

{¶ 15} Appellant's argument fails to recognize that R.C. 1901.17 establishes municipal court original jurisdiction both in cases where the value of the property is less than $15,000 and, as pertinent to this case, in cases where the amount claimed is less than $15,000. The amount sought in appellee's complaint was $9,552.92, well below the statutory monetary threshold. Thus, the record clearly reflects that the trial court possessed the jurisdiction to issue the order. We find appellant's second assignment of error not well-taken.

{¶ 16} On consideration whereof, the judgment of the Sylvania Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.